

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:18-00093

MICHAEL JUSTIN BAILEY and
SARAH K. BAILEY

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant Michael Justin Bailey's motion to continue the trial and all related deadlines for a period of approximately thirty days. (ECF No. 31). In support of his motion and the need for a continuance, Bailey states that defense counsel needs additional time to prepare for trial and go over relevant matters with his client. In particular, counsel for Bailey asserts that the legal issues presented in this case are very complex and that they would need to be resolved prior to trial. However, on July 19, 2018, the government presented a plea offer to defendant. Therefore, counsel needs time to consult with defendant regarding the proposed plea agreement and, if an agreement with the government is not reached, additional time for the filing of pretrial motions is necessary. The government does not oppose a continuance.

Because failure to grant the requested continuance would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the best interest of the defendants and the public in a speedy trial, see 18 U.S.C. § 3161(h)(7)(A), and **GRANTS** the defendant's motion to continue. In deciding to

grant the motion to continue, the court considered the factors outlined in 18 U.S.C. §3161(h)(7)(B) and found that the nature of the prosecution makes it unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act. The court further finds that failure to grant a continuance would deny counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Accordingly, the court hereby **ORDERS** as follows:


1. Trial of this action is continued until October 2, 2018, at 9:30 a.m., in Bluefield. Jury instructions and proposed voir dire are to be filed by September 25, 2018;
2. All pretrial motions are to be filed by August 20, 2018;
3. A pretrial motions hearing before the undersigned is scheduled for August 27, 2018, at 10:30 a.m., in Bluefield;
4. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from the filing of the motion until the trial is excludable for purposes of the Speedy Trial Act.¹

¹ The court notes that, for purposes of determining compliance with the Speedy Trial Act, "in cases involving multiple defendants only one speedy trial clock, beginning on the date of the commencement of the speedy trial clock of the most recently added defendant, need be calculated under 18 U.S.C. § 3161(h)(7)." United States v. Piteo, 726 F.2d 50, 52 (2d Cir. 1983); see also United States v. Walker, Nos. 95-5914, 96-4247, 96-4110, 1997 WL 358770, *3 ((4th Cir. June 30, 1997) (quoting

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 23rd day of July, 2018.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge

Piteo).